APPEAL NO. 001724

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on July 5 and 11, 2000. The hearing officer determined that on _____, the respondent (claimant) injured her left knee in the course and scope of her employment; that the claimant timely reported the injury to the appellant (self-insured) on November 17, 1999; and that the claimant had disability as a result of her compensable injury beginning April 5, 2000, and continuing through the date of the CCH. The self-insured appealed, urged that the evidence is not sufficient to support the decision of the hearing officer, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in its favor on each issue. The claimant responded, contended that the hearing officer properly applied the law concurring disability, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

The claimant testified, called as a witness an employee of the self-insured who worked at the same school as the claimant did, and had admitted into evidence statements of employees who worked at the same school and medical records. The self-insured called the claimant's supervisor who oversaw food service operations at 19 schools and a claims supervisor who worked for the third-party administrator handling the claim for the self-insured and had admitted into evidence medical records, procedures for reporting injuries, and Texas Workers' Compensation Commission (Commission) forms filed with the Commission. The Decision and Order of the hearing officer contains a statement of the evidence that indicates the inconsistencies and conflicts in the evidence. The claimant contended that she slipped, fell, and injured her knee on _____; that she reported the injury to Mr. W, her supervisor who managed food service operations at several schools, when he made an on-site visit on November 17, 1999; that she continued to work with pain until April 5, 2000, when she was taken off work by a doctor; that she has not been released to return to work; and that she has not worked since that date. The self-insured contended that the claimant did not injure her left knee; that if she did injure her left knee, the injury did not occur at work; that the claimant told Mr. W that her knee hurt, but she did not tell him that she hurt her knee at work; that Mr. W first learned that the claimant claimed that she injured her knee at work in March 2000; and that if the claimant had disability, it ended on May 24, 2000, because historically the claimant did not work during the summer months and had no plans to work during the summer after school closed on May 24, 2000.

We first comment on the appeal concerning disability. Disability is defined as the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage. Section 401.011(16). Temporary income benefits (TIBs) are addressed in subchapter F of Chapter 408 of the 1989 Act. *See* Texas Workers' Compensation Commission Appeal No. 92688, decided February 5, 1993, for a decision

in which a schoolteacher had disability during the summer months even though she was not scheduled to work during the summer months. The Appeals Panel has written several decisions concerning school employees, seasonal employees, and TIBs. The issue of disability, not the issue of adjustment or entitlement to TIBs, was not before the hearing officer. He properly applied the law in resolving the disputed issue of disability.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, determines the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer resolved the conflicts in the evidence in favor of the claimant. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). The determinations of the hearing officer are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgment for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge